No. 01-757

JUN 5 2002
OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

SYNGENTA CROP PROTECTION, INC., ROBERT RABB, EDDEE TEMPLET AND KENNETH A. DEVUN,

Petitioners,

v.

HURLEY HENSON,

Respondent.

On Writ Of Certiorari to the United States Court Of Appeals for the Eleventh Circuit

AMICUS CURIAE BRIEF OF THE ASSOCIATION OF TRIAL LAWYERS OF AMERICA IN SUPPORT OF THE RESPONDENT

LEO V. BOYLE
1050 31st St., N.W.
Washington, DC 20007
(202) 965-3500
President,
The Association of
Trial Lawyers of America

JEFFREY ROBERT WHITE*
1050 31st. St., N.W.
Washington, DC 20007
(202) 965-3500
** Counsel of Record*
Attorney for Amicus Curiae

BEST AVAILABLE COPY

TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

IDENTITY AND INTEREST OF *AMICUS CURIAE* 1

SUMMARY OF THE ARGUMENT 2

ARGUMENT 4

I. THE ALL WRITS ACT DOES NOT PROVIDE FEDERAL COURTS AN INDEPENDENT BASIS TO REMOVE STATE COURT ACTIONS NOT OTHERWISE REMOVABLE UNDER THE RULES PROVIDED BY CONGRESS. 4

A. The Independence of State Courts Is Essential to Our System of Federalism, Protected by the Constitution, and Secured By Enforcing the Limits on the Jurisdiction of Federal Court. 4

B. This Court's Precedents Preclude the Use of the All Writs Act to Remove a State Court Action That Is Not Within the Removal Statute Based on the Defense of the Preclusive Effect of a Prior Federal Judgment. 6

C. The All Writs Act Provides No Support for Expanding Jurisdiction Beyond that Provided by Statute Based on the Preclusive Effect of a Prior Federal Judgment. 14

1. The All Writs Act Should Be Narrowly Construed Against Expanding Federal Court Jurisdiction. 14

2. Removal Under the All Writs Act Is Not "Necessary or Appropriate" Where the Preclusive Effect of a Prior Federal Judgment may be Asserted in State Court..... 16

3. Removal Under the All Writs Act to Enforce the Preclusive Effect of a Prior Federal Judgment Is Not Necessary "In Aid of [the Court's] Jurisdiction."..... 20

4 Removal Under the All Writs Act Was Not Necessary To Aid the Jurisdiction Of the Issuing Court. 21

II. NEITHER THE DOCTRINE OF ANCILLARY JURISDICTION NOR STATUTORY SUPPLEMENTAL JURISDICTION PROVIDES AN INDEPENDENT BASIS FOR REMOVAL OF STATE COURT ACTIONS 22

A. The Judicial Doctrine of Ancillary Jurisdiction Is Not Available in this Case..... 22

B The Supplemental Jurisdiction Statute Does Not Provide a Basis for Removal..... 25

III. THIS CASE IS NOT AN APPROPRIATE VEHICLE FOR EXPANDING THE SCOPE OF FEDERAL COURT JURISDICTION. 28

CONCLUSION..... 29

TABLE OF AUTHORITIES

CASES

Ahearn v. Charter Township, 100 F.3d 451 (6th Cir. 1996)..... 26

Alden v. Maine, 527 U.S. 706 (1999) 4

Allied Chem. Corp. v. Daiflon, Inc., 449 U.S. 33 (1980)..16

Amalgamated Clothing Workers v. Richman Brothers Co., 348 U.S. 511 (1954)..... 18

Atascadero State Hosp. v. Scanlon, 473 U.S. 234 (1985) ... 4

Atlantic Coast Line Railroad Co. v. Brotherhood of Locomotive Engineers, 398 U.S. 281 (1970) 5, 15, 17

Blatchford v. Native Village of Noatak, 501 U.S. 775 (1991)6

Chance v. Sullivan, 993 F. Supp. 565 (S.D. Tex. 1998)9, 19

Charles Dowd Box Co. v. Courtney, 368 U.S. 502 (1962) 17

Clinton v. Goldsmith, 526 U.S. 529, 534 (1999) ..16, 20, 21

Erie R.R. v. Tompkins, 304 U.S. 64, 78-79 (1938) 5, 6

Federal Maritime Comm'n v. South Carolina State Ports Auth., No. 01-46, 2002 WL 1050457 (May 28, 2002)4, 5

Finley v. United States, 490 U.S. 545 (1989)6, 11, 14 23, 25

First Alabama Bank v. Parsons Steel, Inc., 474 U.S. 518 (1986)..... 10

Frankenberg v. Superior Distribs., Inc., 961 F. Supp. 1560 (S.D. Ala. 1997) 26

Garcia v. San Antonio Metropolitan Transit Auth., 469 U.S. 528 (1985)..... 5

Gregory v. Ashcroft, 501 U.S. 452 (1991)..... 4, 5

Healy v. Ratta, 292 U.S. 263 (1934) 11

Hillman v. Webley, 115 F.3d 1461 (10th Cir. 1997) 21

Holmes Group, Inc. v. Vornado Air Circulation Sys., Inc., No. 01-408, 2002 WL 1155866 (June 3, 2002) 12

Holt v. Lockheed Support Sys., Inc., 835 F. Supp. 325 (W.D. La. 1993).....27

Howlett v. Rose, 496 U.S. 356 (1990).....6

In re Estate of Tabas, 879 F. Supp. 464 (E.D. Pa. 1995) .27

In re VMS Sec. Litig., 103 F.3d 1317 (7th Cir. 1996).....9

Ivy v. Diamond Shamrock Chems. Co., 996 F.2d 1425 (2d Cir. 1993) 9

Jones v. Hildebrant, 432 US 183 (1977) 28

Kokkonen v. Guardian Life Insurance. Co., 511 U.S. 375 (1994).....6, 14, 22, 25

Kokkonen v. Guardian Life Insurance. Co. of America, 1993 WL 164884 (9th Cir. 1993) 25

Mayor v. Cooper, 6 Wall. 247 (1868) 11

McClung v Silliman, 19 U.S. (6 Wheat) 598 (1821).....19

Middlesex County Ethics Committee v. Garden State Bar Ass'n, 457 U.S. 423 (1982) 18

New York v. United States, 505 U.S. 144, 161 (1992).....5

Owen Equip. & Erection Co. v. Kroger, 437 U.S. 365 (1978) 6

Parker v. Crete Carrier Corp., 914 F. Supp. 156 (E.D. Ky. 1996).....26

Parsons Steel, Inc. v. First Alabama Bank, 474 U.S. 518 (1986).....17

Peacock v. Thomas, 516 U.S. 349 (1996) 22

Printz v. United States, 521 U.S. 898 (1997).....5

Rivet v. Regions Bank, 522 U.S. 470 (1998).....11, 12

Royal Ins. Co. of Am. v. Quinn-L Capital Corp., 3 F.3d 877 (5th Cir. 1993).....24

Ruhrgas AG v. Marathon Oil Co., 526 U.S. 574 (1999) ..19

Sable v. General Motors Corp., 90 F.3d 171 (6th Cir. 1996)9

Sebring Homes Corp. v. T.R. Arnold & Assocs., Inc., 927 F. Supp. 1098 (N.D. Ind. 1995).....26

Tafflin v. Levitt, 493 U.S. 455 (1990) 21

Texas v. White, 74 U.S. (7 Wall.) 700 (1869).....4

United States v. New York Telephone Co., 434 U.S. 159 (1977).....9, 20

Vendo Co. v. Lektro-Vend Corp., 433 U.S. 623 (1977).....17

Xiong v. Minnesota, 195 F.3d 424 (8th Cir. 1999).....9

Yonkers Racing Corp. v. City of Yonkers, 858 F.2d 855 (2d Cir.1988), *cert. denied*, 489 U.S. 1077 (1989).....8, 9

Zewe v. Law Firm of Adams & Reese, 852 F. Supp. 516 (E.D. La. 1993).....27

STATUTES

28 U.S.C. § 1332 31

28 U.S.C. § 1367 .....23, 24

28 U.S.C. § 1441 .....7, 30

All Writs Act, 28 U.S.C. § 1651(a) ..... passim

Judicial Improvements Act of 1990, Pub. L. No. 101-650, § 310(c), 104 Stat. 5089 24

OTHER AUTHORITIES

Amar, Akhil Reed, *Marbury, Section 13, And The Original Jurisdiction Of The Supreme Court*, U. Chi. L. Rev. 443 (1989) 15

Annot., "State Or Federal Law As Governing Applicability of Doctrine of Res Judicata Or Collateral Estoppel In Federal Court Actions," 19 A.L.R. Fed 709 (1974) 18

DOCUMENTARY HISTORY OF THE SUPREME COURT OF THE UNITED STATES, 1789-1800, ORGANIZING THE FEDERAL JUDICIARY: LEGISLATION AND COMMENTARIES (Maeva Marcus et al. eds., 1992) 15

H.R. Rep. No. 101-734, 101st Cong., 2d Sess. 29, reprinted in 1990 U.S.C.C.A.N. 6860 26

Pfander, James E., *Supplemental Jurisdiction And Section 1367: The Case For A Sympathetic Textualism*, 148 U. Pa. L. Rev. 109 (1999) 24

Hoffman, Lonny Sheinkopf, *Removal Jurisdiction and the All Writs Act*, 148 U. Pa. L. Rev. 401 (1999) 8, 9, 16

Wright, Charles A., Arthur R. Miller & Edward H. Cooper, FEDERAL PRACTICE AND PROCEDURE (2d ed. 1994) 23, 24, 27

No. 01-757

IN THE

Supreme Court of the United States

SYNGENTA CROP PROTECTION, INC., ROBERT RABB, EDDEE TEMPLET AND KENNETH A. DEVUN,

Petitioners,

v.

HURLEY HENSON,

Respondent.

On Writ Of Certiorari to the United States Court Of Appeals for the Eleventh Circuit

AMICUS CURIAE BRIEF OF THE ASSOCIATION OF TRIAL LAWYERS OF AMERICA IN SUPPORT OF THE RESPONDENT

IDENTITY AND INTEREST OF *AMICUS CURIAE*

The Association of Trial Lawyers of America ("ATLA") respectfully submits this brief as *amicus curiae* in this case. Letters from the parties granting consent to the filing of this *amicus curiae* brief have been filed with this Court.[1]

---

[1] Pursuant to Rule 37.6, Amicus discloses that no counsel for a party authored any part of this brief, nor did any person or entity other than Amicus Curiae, its members,

ATLA is a voluntary national bar association whose approximately 50,000 trial lawyer members primarily represent individual plaintiffs in civil actions. For many of those individuals, actions in state court based on state law represent a primary source of legal redress. Respect for state courts and comity have long characterized federal-state relations in this area. In ATLA's view, undue expansion of federal court power to divest state courts of jurisdiction undermines these values, contravenes the intent of Congress, and deprives plaintiffs of their choice of a state court forum.

SUMMARY OF THE ARGUMENT

1. The defining issue in this case is not whether a federal court has the power to enforce its judgment, but whether it has the authority to strip a state court of the power to decide the preclusive effect of that judgment in a case that is otherwise unremovable to federal court.

The independence of state courts is essential to our system of federalism and protected by the Tenth Amendment. This Court safeguards that independence by strictly enforcing Congress's limits on federal court jurisdiction.

The recent trend among federal courts to find "residual authority" in the All Writs Act to remove cases that do not satisfy the removal statutes violates those limits. This Court's precedents make clear that a

---

or its counsel make a monetary contribution to the preparation or submission of this brief.

defense based on federal law cannot provide the basis of jurisdiction. Rather, federal courts are obliged to permit the state court to adjudicate the federal defense, with ultimate review by this Court. Comity and due respect for state courts requires a presumption that the state courts are competent to adjudicate the preclusive effect of a prior federal judgment.

The All Writs Act should be construed against expanding federal jurisdiction. Resort to the Act is not "necessary or appropriate" where adequate remedy is available in state court. Removal to assure defendant the benefits of the prior settlement does not aid the jurisdiction of the federal court.

2. Neither the doctrine of ancillary jurisdiction nor the Supplemental Jurisdiction Statute can support removal in this case. Petitioners failed to assert ancillary jurisdiction in the court below. Moreover, this case is governed by 28 U.S.C. § 1367, rather than the judicial doctrine of ancillary jurisdiction.

Petitioners fail to address the application of § 1367 to this case. Federal courts generally regard the Supplemental Jurisdiction Statute as not providing the original jurisdiction required by the removal statute. Additionally, removal on that basis would result in unnecessary interference with state courts.

3. The decision below should be affirmed. If, however, this Court is persuaded that federal courts should be given expanded authority to remove state court cases, this case is not a proper vehicle to do so. Petitioners have abandoned the grounds for reversal argued in the Petition and have failed to preserve their alternative grounds for reversal.

ARGUMENT

I. THE ALL WRITS ACT DOES NOT PROVIDE FEDERAL COURTS AN INDEPENDENT BASIS TO REMOVE STATE COURT ACTIONS NOT OTHERWISE REMOVABLE UNDER THE RULES PROVIDED BY CONGRESS.

A. The Independence of State Courts Is Essential to Our System of Federalism, Protected by the Constitution, and Secured By Enforcing the Limits on the Jurisdiction of Federal Court.

Ours is "an indestructible union, compos d of indestructible states," *Texas v. White*, 74 U.S. (7 all.) 700, 725 (1869). This dual sovereignty is a d ning feature of our Nation's constitutional bluepri .. See *Gregory* v. *Ashcroft*, 501 U.S. 452, 457 (1991) As the Court has recently reminded, "States, upon ratification of the Constitution, did not consent to become mere appendages of the Federal Government." *Federal Maritime Comm'n* v. *South Carolina State Ports Auth.*, No. 01-46 (May 28, 2002), 2002 WL 1050457 at *5. "Any doubt regarding the constitutional role of the States as sovereign entities is removed by the Tenth Amendment, which, like the other provisions of the Bill of Rights, was enacted to allay lingering concerns about the extent of the national power." *Alden v. Maine*, 527 U.S. 706, 713-14 (1999).

Though "our system of dual sovereignty is not a model of administrative convenience . . . that is not its purpose. Rather, '[t]he constitutionally mandated balance of power between the States and the Federal Government was adopted by the Framers to ensure the protection of our fundamental liberties.'" *Federal Maritime Comm'n, supra* at *14, citing *Atascadero State Hospital* v. *Scanlon*, 473 U.S. 234, 242 (1985) (quoting

Garcia v. *San Antonio Metropolitan Transit Authority*, 469 U.S. 528, 572 (1985) (Powell, J., dissenting). "By guarding against encroachments by the Federal Government on fundamental aspects of state sovereignty," this Court strives "to maintain the balance of power embodied in our Constitution and thus to 'reduce the risk of tyranny and abuse from either front.'" *Federal Maritime Comm'n* at *14, quoting *Gregory* v. *Ashcroft*, 501 U.S. 452, 458 (1991).

This constitutional protection extends to the judicial authority of the states. As this Court has observed, among the powers not surrendered to the national government but reserved to the States is "the maintenance of state judicial systems for the decision of legal controversies." *Atlantic Coast Line Railroad Co. v. Brotherhood of Locomotive Engineers*, 398 U.S. 281, 285 (1970). It is fundamental that:

> [T]he constitution . . . recognizes and preserves the autonomy and independence of the States . . . in their judicial departments. Supervision over . . . the judicial action of the States is in no case permissible except as to matters by the constitution specifically authorized or delegated to the United States. Any interference . . ., except as thus permitted, is an invasion of the authority of the State, and, to that extent, a denial of its independence.

Erie R.R. v. Tompkins, 304 U.S. 64, 78-79 (1938).

Admittedly, state courts stand on somewhat different footing from the state legislative and executive branches, which may not be commandeered by the national government. *New York v. United States*, 505 U.S. 144, 161 (1992); *Printz v. United States*, 521 U.S. 898, 922 (1997). The Supremacy Clause requires state

courts to apply federal law.[2] In addition, state courts must entertain federal causes of action, though the national government cannot prescribe the procedural rules state courts must apply in such cases. *Howlett v. Rose*, 496 U.S. 356, 369-72 (1990). A principle safeguard of the independence of state courts lies in scrupulously enforcing the limits on the jurisdiction of federal courts. See *Blatchford* v. *Native Village of Noatak*, 501 U.S. 775, 779 (1991) ("the judicial authority in Article III is limited by [State] sovereignty.")

For this reason, federal courts may exercise only those powers conferred by the Constitution and authorized by Congress. *Finley v. United States*, 490 U.S. 545, 547 (1989). *Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365, 372 (1978) ("For the jurisdiction of the federal courts is limited not only by the provisions of Art. III of the Constitution, but also by Acts of Congress."). Those limits must not be disregarded, *id.* at 374, and are "not to be expanded by judicial decree." *Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 377 (1994).

B. This Court's Precedents Preclude the Use of the All Writs Act to Remove a State Court Action That Is Not Within the Removal Statute

---

[2] However, as the Court in *Erie* stated, the Constitution precludes the national government from dictating state law:

> Congress has no power to declare substantive rules of common law applicable in a state whether they be local in their nature or 'general,' be they commercial law or a part of the law of torts. And no clause in the Constitution purports to confer such a power upon the federal courts.

304 U.S. at 78.

Based on the Defense of the Preclusive Effect of a Prior Federal Judgment.

In this case, the federal district court for the Southern District of Alabama purported to extend its power to a lawsuit in the state district court in Iberville Parish, Louisiana. That civil action, based solely on state law with nondiverse parties, could not have been filed in federal court in the first instance and did not satisfy the requirements prescribed by Congress for removal of state cases to federal court in 28 U.S.C. §1441. Indeed, the case fell outside the one-year time limit for removal imposed by Congress in § 1441.

The federal court nevertheless effectuated a removal and transfer of the case to itself and entered an order dismissing the case. The federal court asserted as the basis for its jurisdiction the All Writs Act, 28 U.S.C. § 1651(a). 261 F.3d at 1067.

As the Eleventh Circuit emphasized, this was not an instance in which there was no other means of giving effect to the prior federal judgment. 261 F.3d at 1071. Petitioners could have entered a defensive plea in state court of res judicata based on the prior federal judgment. Instead, the Louisiana court was deprived of jurisdiction and the state plaintiffs were obliged to travel to a distant forum to litigate essentially the same issue before the district court in Alabama.

The All Writs Act provides:

> The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

28 U.S.C. § 1651(a).

This Court's precedents clearly preclude such a broad expansion of federal court jurisdiction at the expense of state courts.

Any notion that such expanded jurisdiction based on the All Writs Act is necessary for federal courts in the aid of their jurisdiction is belied by the fact that for 200 years no federal court asserted such expansive authority. *See* Lonny Sheinkopf Hoffman, *Removal Jurisdiction and the All Writs Act*, 148 U. Pa. L. Rev. 401, 415 (1999).[3]

The first reported decision to use the Act as a basis for expanding federal jurisdiction beyond the express limits set by Congress was *Yonkers Racing Corp. v. City of Yonkers*, 858 F.2d 855 (2d Cir.1988), *cert. denied*, 489 U.S. 1077 (1989). The panel majority rejected the argument that the removal statutes provided the exclusive source of removal jurisdiction. Rather, the court stated, there exists a "residual jurisdictional authority" derived from the All Writs Act that permits removal in "exceptional cases." *Id.* at 864.

Many federal courts quickly followed the trail blazed by the Second Circuit. In the following decade, some thirty federal decisions relied on the All Writs Act, in whole or in part, as an independent basis for authority to remove otherwise unremovable cases. *See*

---

[3] The current statute closely tracks section 14 of the Judiciary Act of 1789:

> Sec. 14. That all the before-mentioned courts of the United States, shall have power to issue writs of scire facias, habeas corpus, and all other writs not specially provided for by statute, which may be necessary for the exercise of their respective jurisdictions,.

Hoffman, *supra*, at 412, n. 31 (citing cases). Many, like the present case, asserted jurisdiction under the Act on the basis of the preclusive effect of a prior federal judgment. *E.g., Ivy v. Diamond Shamrock Chems. Co.*, 996 F.2d 1425 (2d Cir. 1993); *Xiong v. Minnesota*, 195 F.3d 424 (8th Cir. 1999); *In re VMS Sec. Litig.*, 103 F.3d 1317 (7th Cir. 1996).[4]

These decisions cannot be reconciled with this Court's pronouncements regarding the limited jurisdiction of the lower federal courts.

Courts asserting an independent basis of jurisdiction frequently rely on language found in this Court's opinion in *United States v. New York Telephone Co.*, 434 U.S. 159 (1977). *See, e.g., Yonkers, supra*, 858 F.2d at 863; *Sable v. General Motors Corp.*, 90 F.3d 171, 175 (6th Cir. 1996). *New York Telephone* upheld a federal court injunction ordering the telephone company to cooperate with the FBI in installing a pen register that had been authorized by the court under a federal criminal statute. The Court did not read the All Writs Act as expanding the federal court's jurisdiction. Rather, the Court stated only that a district court may invoke the All Writs Act "as may be necessary or

---

[4] Predictably, the threshold of "extraordinary circumstances" eroded considerably. For example in *Chance v. Sullivan*, 993 F. Supp. 565, 567 (S.D. Tex. 1998), plaintiffs who had settled a class action in federal court were unhappy with the way their attorney paid out the proceeds and deducted expenses. They filed suit in state court asserting state law claims of fraud and legal malpractice. The federal court that approved the settlement removed the case to adjudicate the claims. Little appears in the court's opinion why these circumstances are extraordinary or why it was necessary for the federal court to decide the case itself to protect its own jurisdiction.

appropriate to effectuate and prevent the frustration of orders it has previously issued in its exercise of jurisdiction *otherwise obtained*." *Id.* at 163 (emphasis added). A second essential part of the Court's ruling was its finding that "without the [phone] Company's assistance there is no conceivable way in which the surveillance authorized by the District Court could have been successfully accomplished." *Id.* at 175.

In this case, as the court below indicated, there was no basis for the federal court to otherwise obtain jurisdiction over the Louisiana state suit. 261 F.3d at 1068 n.3. Moreover, as the lower court also pointed out, defendant had an adequate available remedy in state court. *Id.* at 1071. The issue before this Court is not whether a prior federal judgment shall be given effect. It is, rather, whether a federal court may divest a state court of jurisdiction over a case where a federal judgment is available as a defense. This Court's precedents clearly indicate that the federal court may not extend its reach so far.

A unanimous Court in *First Alabama Bank v. Parsons Steel, Inc.*, 474 U.S. 518 (1986), stated in a different context that "the important values of federalism and comity embodied in the Full Faith and Credit Act" compelled federal deference to the state court adjudication of a claim of res judicata based on the preclusive effect of a prior federal judgment. *Id.* at 523. The risk of an erroneous determination by the state court was not sufficient reason to override the authority of the state court. "Challenges to the correctness of a state court's determination as to the conclusive effect of a federal judgment must be

pursued by way of appeal through the state-court system and certiorari from this Court." *Id.* at 525.

Shortly after the *Yonkers* decision, this Court eliminated the Second Circuit's essential premise that federal courts possess "residual jurisdictional authority." In *Finley v. United States*, 490 U.S. 545 (1989), the Court rejected the judge-made doctrine of pendant party jurisdiction, which had been asserted by lower federal courts without specific Congressional authorization. Justice Scalia wrote for the Court:

> It remains rudimentary law that "[a]s regards all courts of the United States inferior to this tribunal, two things are necessary to create jurisdiction, whether original or appellate. The Constitution must have given to the court the capacity to take it, *and an act of Congress must have supplied it.*"

Id. at 547-48 (emphasis the Court's), quoting *The Mayor v. Cooper*, 6 Wall. 247, 252 (1868). Moreover, "Due regard for the rightful independence of state governments . . . requires that [federal courts] scrupulously confine their own jurisdiction to the precise limits which the statute has defined." *Id.* at 552-53, quoting *Healy v. Ratta*, 292 U.S. 263, 270 (1934).

To permit federal courts to bootstrap their own jurisdiction to reach beyond that authorized by Congress would render the rudimentary principle stated in *Finley* meaningless. That principle does not allow federal courts to expand the boundaries of their own jurisdiction based simply on the availability of the defense of claim preclusion by a prior federal judgment.

In *Rivet v. Regions Bank*, 522 U.S. 470 (1998), the Court addressed an issue closely analogous to that presented here. Defendants had removed a case from

Louisiana state court involving only Louisiana parties with claims based exclusively on Louisiana law, based on their assertion that plaintiffs' action was precluded as a matter of federal law by earlier Bankruptcy Court orders. Justice Ginsburg stated for a unanimous Court:

> This case presents the question whether removal may be predicated on a defendant's assertion that a prior federal judgment has disposed of the entire matter and thus bars plaintiffs from later pursuing a state-law-based case. We reaffirm that removal is improper in such a case.

Id. at 472. The Court, relying on the "well-pleaded complaint rule," and clarifying prior decisional law, held that claim preclusion based on a prior federal judgment "remains a defensive plea involving no recasting of the plaintiff's complaint, and is therefore not a proper basis for removal." *Id.* at 477.

Where, as here, the federal court is faced with a decision whether to remove the state case or allow the state court to proceed to decide the preclusive effect of the prior federal settlement decree, it is obliged to allow the state court to go forward. As the Court in *Rivet* declared:

> [C]laim preclusion by reason of a prior federal judgment is a defensive plea that provides no basis for removal under § 1441(b). Such a defense is properly made in the state proceedings, and the state courts' disposition of it is subject to this Court's ultimate review.

Id. at 478.

The Court has very recently reaffirmed this principle. In *Holmes Group, Inc. v. Vornado Air Circulation Sys., Inc.*, No. 01-408, 2002 WL 1155866 (June

3, 2002), the Court held that the Federal Circuit had no jurisdiction over a case in which the complaint did not allege a claim arising under federal patent law, but defendant's answer contained a patent-law counterclaim. Justice Scalia explained the Court's reasoning:

> Allowing a counterclaim to establish arising under jurisdiction would also contravene the longstanding policies underlying our precedents. First, since the plaintiff is the master of the complaint, the well-pleaded-complaint rule enables him, by eschewing claims based on federal law, to have the cause heard in state court. The rule proposed by respondent, in contrast, would leave acceptance or rejection of a state forum to the master of the counterclaim. It would allow a defendant to remove a case brought in state court under state law, thereby defeating a plaintiffs choice of forum, simply by raising a federal counterclaim. Second, conferring this power upon the defendant would radically expand the class of removable cases, contrary to the due regard for the rightful independence of state governments that our cases addressing removal require. And finally, allowing responsive pleadings by the defendant to establish arising under jurisdiction would undermine the clarity and ease of administration of the well-pleaded-complaint doctrine, which serves as a quick rule of thumb for resolving jurisdictional conflicts.

At *4. (internal citations omitted).

The federal court's removal in this case, based on the defense of federal claim preclusion, similarly contravenes this Court's definition of the boundaries of federal removal jurisdiction and the Court's deference to state court proceedings.

C. The All Writs Act Provides No Support for Expanding Jurisdiction Beyond that Provided by Statute Based on the Preclusive Effect of a Prior Federal Judgment.

1. The All Writs Act Should Be Narrowly Construed Against Expanding Federal Court Jurisdiction.

Even if the district court's removal in this case is not barred by this Court's prior precedents, removal cannot be supported by a proper interpretation of the All Writs Act.

It is the prerogative of Congress, not the courts themselves, to define the limits of the jurisdiction of the lower federal courts, within the powers provided by Article III of the Constitution. *Finley v. United States*. 490 U.S. 545 (1989); *Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 377 (1994). An unduly expansive interpretation by the courts of the All Writs Act invades that Congressional responsibility. As the Eleventh Circuit correctly stated:

> Too elastic an interpretation of the All Writs Act perverts it from a tool for effectuating Congress's intent in conferring jurisdiction on the lower federal courts into a device for judicially re-equilibrating a state-federal balance that is Congress's to strike.

261 F.3d 1071.

This Court has long understood that Congress did not intend the All Writs Act, and its predecessor, § 14 of the Judiciary Act of 1789, to expand federal jurisdiction over cases beyond those Congress has expressly provided for elsewhere by statute.

There was little debate in the First Congress concerning those provisions. However, there was considerable controversy as to whether a system of lower federal courts should exist and how much power to bestow on them. *See generally*, THE DOCUMENTARY HISTORY OF THE SUPREME COURT OF THE UNITED STATES, 1789-1800, ORGANIZING THE FEDERAL JUDICIARY: LEGISLATION AND COMMENTARIES 1-38 (Maeva Marcus et al. eds., 1992) As this Court recounted in *Atlantic Coast Line Railroad Co. v. Brotherhood of Locomotive Engineers*, 398 U.S. 281 (1970), many of the Framers of the Constitution opposed creating a system of federal courts at all and felt "that the state courts could be entrusted to protect both state and federal rights." *Id.* at 285.

Ultimately, Congress struck a compromise in the Judiciary Act of 1789. The lower federal courts would be given certain limited powers; they were specifically denied power to review directly cases from state court. *Id.* at 286. *See* 28 U.S.C. §1257 (1999) (limiting federal review of state court proceedings to the Supreme Court).

In view of this controversy, the absence of debate concerning the writ power in sections 13 and 14 suggests that these provisions were not intended to invest the inferior federal courts with any additional jurisdiction. A straightforward reading of their text reflects Congress' intent "that the Act is investing courts with certain authority if and when they have independently founded jurisdiction, based on earlier sections of the Act." Akhil Reed Amar, *Marbury, Section 13, And The Original Jurisdiction Of The Supreme Court*, U. Chi. L. Rev. 443, 459 (1989). Any suggestion that the writs provisions endowed the lower federal courts with additional, undefined jurisdiction beyond that which

was carefully defined elsewhere in the Judiciary Act would most certainly have stirred serious opposition. *See* Hoffman, *supra,* at 435-36.

The decisions of this Court, from the earliest to the most recent, have consistently confirmed this understanding that the All Writs Act was not designed as a basis of independent jurisdiction. See *McClung v Silliman,* 19 U.S. (6 Wheat) 598, 601-02 (1821) (Section 14 "could only have been intended to vest the power now contended for in cases where the jurisdiction already exists"); *Clinton v. Goldsmith,* 526 U.S. 529, 534-35 (1999) ("the express terms of the Act confine the power of the [court] to issuing process 'in aid of' its existing statutory jurisdiction; the Act does not enlarge that jurisdiction").

Thus, application of the All Writs Act to this case must give effect to Congress's intent not to expand the jurisdiction of lower federal courts beyond the boundaries specifically set forth by Congress.

2. Removal Under the All Writs Act Is Not "Necessary or Appropriate" Where the Preclusive Effect of a Prior Federal Judgment may be Asserted in State Court

The power invested in federal courts by §1651(a) is "essentially equitable and, as such, not generally available to provide alternatives to other, adequate remedies at law." *Clinton v. Goldsmith,* 526 U.S. 529, 538 (1999). *See also Allied Chem. Corp. v. Daiflon, Inc.,* 449 U.S. 33, 35 (1980)("In order to insure that the writ will issue only in extraordinary circumstances, this Court has required that a party seeking issuance have no other adequate means to attain the relief he desires").

This principle has led this Court to require federal courts to allow parties to seek their remedy in state court, rather than interfere with the state court action. *See Vendo Co. v. Lektro-Vend Corp.,* 433 U.S. 623, 630 (1977) (Under the Anti-Injunction Act, "'any doubts as to the propriety of a federal injunction against state court proceedings should be resolved in favor of permitting the state courts to proceed in an orderly fashion to finally determine the controversy'" *Id.* at 630, quoting *Atlantic Coast Line R.R., supra,* at 297; *Parsons Steel, Inc. v. First Alabama Bank,* 474 U.S. 518, 525 (1986) ("Challenges to the correctness of a state court's determination as to the conclusive effect of a federal judgment may be pursued by way of appeal through the state-court system and certiorari from this Court.")

The unspoken premise of Petitioners' insistence that the federal district court in Alabama determine the preclusive effect of the prior settlement in this case is an assumption that the Louisiana state court is not competent to make that determination correctly. Such an assumption is foreign to our federalist system in which "[c]oncurrent jurisdiction has been a common phenomenon in our judicial history, and exclusive federal court jurisdiction over cases arising under federal law has been the exception rather than the rule." *Charles Dowd Box Co. v. Courtney,* 368 U.S. 502, 507-08 (1962). "Under this system of dual sovereignty," the Court has stated, "we have consistently held that state courts have inherent authority, and are thus presumptively competent, to adjudicate claims arising under the laws of the United States." *Tafflin v. Levitt,* 493 U.S. 455,458 (1990).

This Court has explicitly rejected Petitioners' lack of confidence in state courts:

> The assumption upon which the argument proceeds is that federal rights will not be adequately protected in the state courts, and the "gap" complained of is impatience with the appellate process if state courts go wrong. But during more than half of our history Congress, in establishing the jurisdiction of the lower federal courts, in the main relied on the adequacy of the state judicial systems to enforce federal rights, subject to review by this Court. . . . We cannot assume that this confidence has been misplaced.

Amalgamated Clothing Workers v. Richman Brothers Co., 348 U.S. 511, 518 (1954).

Even when constitutional rights are at stake, this Court has emphasized that "[m]inimal respect for the state processes, of course, precludes any presumption that the state courts will not safeguard federal constitutional rights." *Middlesex County Ethics Committee v. Garden State Bar Ass'n*, 457 U.S. 423, 431 (1982). Surely federal courts must equally respect the competency of state courts to enforce prior federal judgments.

There is simply no principled or practical basis for denying that respect to state courts. Res judicata is not a peculiarly federal principle of law; indeed, as in this case, its application may involve the application of state law.[5]

---

[5] Indeed, it is generally recognized that "state law governs the applicability of the doctrine of res judicata or collateral estoppel in a federal court action in which jurisdiction is based solely on diversity of citizenship of the parties, at least where the issues involved in the prior judgment were issues of state law." Annot., "State Or Federal Law As Governing Applicability Of Doctrine Of Res Judicata Or Collateral Estoppel In Federal Court Action," 19 A.L.R. Fed. 709 at § 3 (1974).

Nor can it be presumed that the court which entered a federal judgment is the only tribunal equipped to ascertain its scope. State courts routinely apply claim preclusion principles to judgments they have not entered and routinely enforce contracts they had no hand in drafting. Such documents should stand on their own. To hold otherwise may tempt negotiating parties to evade difficult or contentious issues, glossing over the rights of strangers with ambiguous language, each side confident the district court will favor their position should those strangers come to call.

Finally, it should not be ignored that federal judges are human. Following resolution of a long and arduous dispute, an apparent attempt to unravel that resolution may understandably engender some exasperation on the part of the judge. *See, e.g., Chance v. Sullivan*, 993 F. Supp. 565, 567 (S.D. Tex. 1998)("Finally, nothing would please this Court more than to send these claims back to state court, a sentiment apparently equally matched by Plaintiffs' desire to avoid this Court. The underlying litigation in this case began almost six years ago and has been an extremely protracted, extraordinarily burdensome affair.")

To allow a state court with fresh eyes to rule on the preclusive effect of a federal settlement order does not detract from the federal court's jurisdiction. "Federal and state courts are complementary systems for administering justice in our Nation. Cooperation and comity, not competition and conflict, are essential to the federal design." *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 586 (1999)

3. Removal Under the All Writs Act to Enforce the Preclusive Effect of a Prior Federal Judgment Is Not Necessary "In Aid of [the Court's] Jurisdiction."

Petitioners argue forcefully that it was necessary to remove plaintiff's state court case to federal court to ensure that the company obtained the benefit of the bargain it had struck. Brief for Petitioners at 16-17. Petitioners fail to explain how enforcement of their rights necessarily aids the jurisdiction of the court.

In *United States v. New York Telephone Co.*, 434 U.S. 159 (1977), Justice Stevens, joined in dissent by three other justices, pointed out,

> The fact that a party may be better able to effectuate its rights or duties if a writ is issued never has been, and under the language of the statute cannot be, a sufficient basis for issuance of the writ. . . . Not all orders that may enable a party to effectuate its rights aid the court in its exercise of jurisdiction."

Id. at 189 & n.20.(Stevens, J., dissenting in part).

In this case, Petitioners obviously believe their defense of claim preclusion is likelier to prevail in the federal district court in Alabama than in the Louisiana court. But unless the court's interest in its jurisdiction is to be deemed coextensive with defendant's interest in successfully reaping the benefits of their negotiated settlement, Petitioners do not establish that it is necessary to the federal court's jurisdiction that the state court be prevented from deciding that matter.

4 Removal Under the All Writs Act Was Not Necessary To Aid the Jurisdiction Of the Issuing Court.

This case presents an additional obstacle to use of the All Writs Act to support removal jurisdiction. Respondents' state court case was removed to the federal court for the Eastern District of Louisiana. It was then transferred to the Southern District of Alabama. 261 F.3d 1067. As this Court has explained, "[w]hile the All Writs Act authorizes employment of extraordinary writs, it confines the authority to the issuance of process 'in aid of' the *issuing court's* jurisdiction. *Clinton v. Goldsmith*, 526 U.S. 529, 534 (1999) (emphasis added)

Regardless of the interest of the Alabama federal court, the Louisiana district court clearly had no jurisdictional stake in this matter. *Compare Hillman v. Webley*, 115 F.3d 1461, 1469-70 n.6 (10th Cir. 1997) (where the federal district court in Colorado approved a settlement, removal of a subsequently filed California state action would only have been proper to the federal district court in California pursuant to § 1441).

To authorize every federal district court to command the removal to itself of any state court case anywhere in the country that may touch upon a federal decree would constitute a drastic expansion of federal jurisdiction that is certainly beyond the intent of Congress in enacting the removal statutes.

II. Neither the Doctrine of Ancillary Jurisdiction Nor Statutory Supplemental Jurisdiction Provides and Independent Basis for Removal of State Court Actions

A. The Judicial Doctrine of Ancillary Jurisdiction Is Not Available in this Case.

The Petition sought certiorari on the basis that the Eleventh Circuit's decision conflicted with decisions of other Circuits that the All Writs Act itself provides jurisdiction to remove state cases. *See* Pet. at 7. Petitioners in their merits brief abandoned that argument. Instead, Petitioners argue that the doctrine of ancillary jurisdiction provides a basis for the removal in this case. *See* Brief for Petitioners at 14-15.

Petitioners rely almost entirely on two decisions of this Court. *Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375 (1994), held a federal court that had approved a settlement agreement possessed no ancillary jurisdiction over state law claims based on breach of that agreement. *Id.* at 379. In *Peacock v. Thomas*, 516 U.S. 349 (1996), the Court held a federal court that had entered judgment for plaintiff in a class action possessed no ancillary jurisdiction over a subsequent lawsuit by the federal judgment creditor seeking to impose liability for the judgment on an officer of the corporate defendant. *Id.* at 359. Petitioners attempt to tease out of dicta in these two opinions some basis for ancillary jurisdiction in this case. These attempts fail for two reasons.

First, Petitioners failed to raise this issue below. As the Eleventh Circuit stated, "Ciba-Geigy did not, furthermore, assert ancillary jurisdiction . . . and we

therefore do not address it as a potential basis." 261 F.3d at 1068, n.3.

Second, the judicial doctrine of ancillary jurisdiction as been superseded by statute and does not apply in this case. In *Finley v. United States*,. 490 U.S. 545 (1989), this Court rejected the judicial doctrine known as pendant party jurisdiction, absent Congressional authorization, casting doubt on the continued validity of the related judicial doctrines of pendant claim and ancillary jurisdiction. In response, Congress enacted the Judicial Improvements Act of 1990. Section 310 of that Act amended Title 28 of the United States Code by adding section 1367, the Supplemental Jurisdiction Statute. *See*, Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, 13 Federal Practice and Procedure: Jurisdiction and Related Matters 2d, § 3523, at 65 (Supp. 1999).[6]

---

[6] The Supplemental Jurisdiction Statute provides, in part:

> (a) Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.
>
> (b) In any civil action of which the district courts have original jurisdiction founded solely on section 1332 of this title, the district courts shall not have supplemental jurisdiction under subsection (a) over claims by plaintiffs against persons made parties under Rule 14, 19, 20, or 24 of the Federal Rules of Civil Procedure, or over claims by persons proposed to be joined as plaintiffs under Rule 19

Congress intended the statute "to codify the doctrines of pendent and ancillary jurisdiction under the common rubric of supplemental jurisdiction." James E. Pfander, *Supplemental Jurisdiction And Section 1367: The Case For A Sympathetic Textualism*, 148 U. Pa. L. Rev. 109, 116 (1999); *see also, Royal Ins. Co. of Am. v. Quinn-L Capital Corp.*, 3 F.3d 877, 881 n.2 (5th Cir. 1993) ("What was referred to formerly as 'ancillary jurisdiction' is now included within the category of 'supplemental jurisdiction.'").

Congress also provided that § 1367 was prospective only, suggesting that it was not merely a codification of existing law. Judicial Improvements Act of 1990, Pub. L. No. 101- 650, § 310(c), 104 Stat. 5089, 5114 ("The amendments made by this section shall apply to civil actions commenced on or after the date of the enactment of this Act."). The date of enactment was December 1, 1990. *See* 13 Charles A. Wright, Arthur R. Miller & Edward H. Cooper, FEDERAL PRACTICE AND PROCEDURE s 3523, at 26, n.57.3 (Supp. 1994) (it is "crystal clear" that the statute applies only to claims sought to be appended to underlying actions commenced after its effective date).

Cases filed prior to that date are governed by prior case law regarding ancillary jurisdiction. In *Peacock*, for example, where the underlying class action

---

of such rules, or seeking to intervene as plaintiffs under Rule 24 of such rules, when exercising supplemental jurisdiction over such claims would be inconsistent with the jurisdictional requirements of section 1332.

28 U.S.C. § 1367

was filed in 1987, 516 U.S. at 352, prior decisional law therefore applied.[7]

In this case, counsel for Respondent informs amicus that the *Price* lawsuit was filed in Alabama state court and then removed to the federal court in August 1994. The supplemental jurisdiction statute clearly applies. Inexplicably, Petitioners make no mention of 28 U.S.C. § 1367 in their brief.

Any argument that the court-made doctrine of ancillary jurisdiction should apply in disregard of a Congressional enactment expressly providing for such authority would contradict this Court's rationale in *Finley* and its instruction that "neither the convenience of the litigants nor considerations of judicial economy can suffice to justify extension of the doctrine of ancillary jurisdiction." 490 U.S. at 552.

In any event, Petitioners have utterly failed to preserve this issue.

B The Supplemental Jurisdiction Statute Does Not Provide a Basis for Removal.

Even accepting that Petitioners' assertion of ancillary jurisdiction is properly before this Court, the Supplemental Jurisdiction Statute does not support removal of Respondents' state law case.

---

[7] The Court's Kokkonen opinion does not indicate when the underlying action was filed. The Court cited § 1367 with an introductory "cf." signal, indicating the statute was not directly applicable to the case. 511 U.S. at 380. However, the unpublished opinion of the lower court indicates that Kokkonen filed that lawsuit in April, 1991. *Kokkonen v. Guardian Life Ins. Co. of America*, 1993 WL 164884, **1 (9th Cir. 1993) (unpublished opinion).

First, as the Eleventh Circuit correctly noted, § 1367 cannot provide the original jurisdiction required by the removal statute, 28 U.S.C. § 1441. 261 F.3d at 1068, n.3. The plain text of § 1367(b) imposes strict limits on the availability of supplemental jurisdiction in connection with cases based solely on diversity, such as the case in Alabama federal district court. Supplemental jurisdiction is denied where its use would be "inconsistent with the jurisdictional requirements of section 1332." This statutory language reflects Congress's stated intention to bar the use of supplemental jurisdiction "to evade the jurisdictional requirement of 28 U.S.C. § 1332 . . . [by] adding claims not within original federal jurisdiction" H.R. Rep. No. 101-734, 101st Cong., 2d Sess. 29, reprinted in 1990 U.S.C.C.A.N. 6860, 6874.

Consequently, federal courts have consistently held that the Supplemental Jurisdiction Statute cannot provide a basis for removing a state court case that is not otherwise removable. *See Ahearn v. Charter Township*, 100 F.3d 451, 456 (6th Cir. 1996) (the "supplemental-jurisdiction statute is not a source of original subject- matter jurisdiction, and a removal petition therefore may not base subject-matter jurisdiction on the supplemental-jurisdiction statute"); *Frankenberg v. Superior Distribs., Inc.*, 961 F. Supp. 1560, 1566 (S.D. Ala. 1997) (use of the statute "for establishing subject matter jurisdiction, in my opinion, would extend the doctrine of supplemental jurisdiction too broadly."); *Parker v. Crete Carrier Corp.*, 914 F. Supp. 156, 159 (E.D. Ky. 1996) ("Supplemental jurisdiction cannot destroy the requirement for complete diversity"); *Sebring Homes Corp. v. T.R. Arnold & Assocs., Inc.*, 927 F. Supp. 1098, 1101 (N.D. Ind. 1995) ("The supplemental

jurisdiction statute does not confer original jurisdiction on claims or suits."); *In re Estate of Tabas*, 879 F. Supp. 464, 467 (E.D. Pa. 1995) ("the supplemental jurisdiction statute does not allow a party to remove an otherwise unremovable action to federal court" and "is not . . . an independent source of removal jurisdiction"); *Zewe v. Law Firm of Adams & Reese*, 852 F. Supp. 516, 520 (E.D. La. 1993) ("a district court does not have supplemental jurisdiction under 28 U.S.C. § 1367 to entertain the merits of claims in a state court suit which was removed without original jurisdiction"); *Holt v. Lockheed Support Sys., Inc.*, 835 F. Supp. 325, 329 (W.D. La. 1993) ("Defendant's application of 28 U.S.C. § 1367 would impermissibly broaden this court's removal jurisdiction"); *see also* 13B Charles Alan Wright et al., FEDERAL PRACTICE AND PROCEDURE § 3567.3, at 63 (2d ed. Supp. 1999) ("The supplemental- jurisdiction statute is not a source of original jurisdiction and a case cannot be brought or removed on grounds of supplemental jurisdiction alone.").

Second, removal of Respondents' Louisiana state court action cannot be said to be either ancillary or supplementary to any case within the jurisdiction of the federal court purporting to exercise that power, the Eastern District of Louisiana.

Third, and more broadly, removal on the basis of either ancillary or supplemental jurisdiction suffers from the same deficiencies amicus has described earlier with respect to independent jurisdiction under the All Writs Act. The exercise of such authority is not necessary where an adequate remedy is readily available in the form of raising a defensive plea of res judicata in the state court based on the prior federal judgment. Removal under such circumstances, whether based on ancillary or supplemental jurisdiction,

conflicts with the respect and comity owed to the courts of the sovereign states.

III. THIS CASE IS NOT AN APPROPRIATE VEHICLE FOR EXPANDING THE SCOPE OF FEDERAL COURT JURISDICTION.

ATLA supports affirmance of the lower court's decision on the basis of its proper application of the narrow scope of the All Writs Act. If, however, this Court is persuaded that federal courts should be accorded greater authority to interfere with state court proceedings and that different boundaries should be set on federal court jurisdiction, ATLA suggests that this case is not an appropriate vehicle for doing so.

First, although the Petition for Certiorari sought review of the question whether the All Writs Act provided an independent basis of jurisdiction, Petitioners subsequently abandoned that argument. See Brief for Petitioners at 9. This case no longer presents the question initially contemplated in the Petition. *See Jones v. Hildebrant*, 432 US 183 (1977) (dismissal as improvidently granted is appropriate where it becomes clear that the case "does not present the precise question stated in the petition or passed upon below.")

Second, Petitioners in this Court seek reversal on the basis of the doctrine of ancillary jurisdiction. However, as the lower court indicated, that Petitioners did not raise that argument below, and the court therefore did not address that potential basis for jurisdiction. 261 F.3d at 1068, n.3.

Third, Petitioners make no mention of the Supplemental Jurisdiction Statute, which on its face

appears directly applicable to their assertion of ancillary jurisdiction.

Because these issues have not been properly preserved or are not fully addressed by Petitioners in this Court, ATLA suggests that this case does not offer an appropriate vehicle for redefining the boundaries on federal court jurisdiction.

CONCLUSION

For the above reasons, the decision of the court of appeals should be affirmed.

Respectfully submitted,

Jeffrey Robert White
1050 31st St., N.W.
Washington, DC 20007
(202) 965-3500
ATLA Senior Amicus Counsel
Counsel of Record

June 5, 2002